

FCC MAIL SECTION

Before the  
Federal Communications Commission  
JUL 11 1995  
Washington, D.C. 20554

DISPATCHED BY  
MM Docket No. 95-108

In the Matter of

Amendment of Section 73.202(b) RM-8631  
Table of Allotments  
FM Broadcast Stations  
(Ankeny and West Des Moines,  
Iowa)

**NOTICE OF PROPOSED RULEMAKING**

Adopted: June 29, 1995; Released: July 14, 1995

Comment Date: September 5, 1995

Reply Comment Date: September 20, 1995

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Fuller-Jeffrey Broadcasting Corporation of Greater Des Moines ("Fuller-Jeffrey"), licensee of Station KJJY-FM, Channel 223C2, Ankeny, Iowa, proposing the reallocation of Channel 223C2 from Ankeny to West Des Moines, Iowa, and the modification of Station KJJY-FM's license to specify West Des Moines, Iowa, as its community of license.

2. Petitioner states that its petition complies with the requirements set forth in §1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.<sup>1</sup> See *Modification of FM License*, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). Petitioner states that the requested reallocation to West Des Moines is mutually exclusive with the existing allotment of Channel 223C2 at Ankeny, Iowa. Petitioner further states that the public interest would be served by

the reallocation since it would provide West Des Moines with its first local aural transmission service<sup>2</sup> while Ankeny would retain local aural transmission service through vacant but applied for Channel 292A. Petitioner states that no change in transmitter site is required since the station will be able to place a city grade signal, 70dBu contour, over West Des Moines from its present site.<sup>3</sup>

3. Based on the information before us, we are unable to determine whether petitioner's proposal would result in a preferential arrangement of allotments. Contrary to petitioner's claim, its proposal will not provide West Des Moines with a first local transmission service, but could result in a second local service.<sup>4</sup> This is due to the fact that non-commercial FM Station KWDM, Channel 204A is licensed to Ankeny, and non-commercial FM stations are now counted as transmission and reception services for purposes of Section 307(b) allotment comparison. See *Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd at 7097 and n.19; *Valley Broadcasters, Inc.* 5 FCC Rcd 2785 (1990); *Channel 32 Broadcasting Company* 6 FCC Rcd 5188 (1991), recon. denied, 7 FCC Rcd 1694 (1992). However, we also note that, according to the 1990 U.S. Census, West Des Moines is located within the Urbanized Area of Des Moines, Iowa. In light of the above, we question whether West Des Moines should be credited with all of the aural transmission services licensed in the Des Moines Urbanized Area or whether the instant proposal should be considered as a second local transmission service for West Des Moines. Petitioner is requested to submit information sufficient to show that West Des Moines is deserving of such a preference using the Commission's three factors enumerated in *RKO General (KFRC)*, 5 FCC Rcd 3222 (1990) and *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) and *Elizabeth City, North Carolina, and Chesapeake, Virginia*, 9 FCC Rcd 3586 (1994).<sup>5</sup> Finally, we encourage the petitioner to submit any additional information regarding the public interest benefits that would accrue from the reallocation of Channel 223C2 to West Des Moines, Iowa.

4. We believe petitioner's proposal warrants consideration. Channel 223C2 at Ankeny could be reallocated to West Des Moines, Iowa, since it would not deprive Ankeny of its only local aural transmission service,<sup>6</sup> its use at West Des Moines is mutually exclusive with its present use at Ankeny, and it may provide the community of West Des Moines with its second local aural transmission service. A staff engineering analysis has determined that Channel 223C2 can be allotted to West Des Moines, Iowa, in com-

<sup>1</sup> This petition for rule making was originally dismissed by letter because it would result in the removal of Ankeny's sole local transmission service. Although the letter acknowledged that a construction permit had been granted for a new FM station at Ankeny in an *Initial Decision* in MM Docket No. 88-522, the letter stated that until a permittee was operating on Channel 292A, the channel would not be considered an existing service for purposes of a change in community. Petitioner filed a petition for reconsideration of this action.

Since a station is now licensed and operating on Channel 292A at Ankeny, consideration of this rulemaking petition at this time would not result in removal of Ankeny's sole local transmission service. Accordingly, we will dismiss the petition for reconsideration as moot in light of our action issuing the instant NPRM.

<sup>2</sup> Petitioner notes that while there is no AM or FM channel

licensed to or applied for in West Des Moines, a Class D, noncommercial, educational FM broadcast station KWDM, Channel 205D, is currently licensed to serve West Des Moines. Our records indicate that the station has been upgraded to a Class A station.

<sup>3</sup> The coordinates for this allotment are North Latitude 41-39-53 and West Longitude 93-45-24.

<sup>4</sup> The allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight given on priorities (2) and (3)].

<sup>5</sup> Since there will be no change in petitioner's transmitter site no study reflecting gain or loss in service will be required.

<sup>6</sup> Channel 292A, Ankeny, has been licensed to V.O.B., Inc. KMXD(FM), BMLH-920430KI.

pliance with the Commission's minimum distance separation requirements at its presently licensed transmitter site. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 223C2 at West Des Moines.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules for the communities listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Ankeny, Iowa	223C2, 292A	292A
West Des Moines	-	223C2

proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

#### FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interest parties may file comments on or before September 5, 1995, and reply comments on or before September 20, 1995, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant as follows:

John Griffith Johnson, Jr.  
Bryan, Cave, McPheeters & McRoberts  
700 Thirteenth Street, N.W., Suite 700  
Washington, D.C. 20005-3960

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Arthur D. Scrutchins, Mass Media Bureau, (202) 776-1660. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the